

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:STP:TL-N-1901-01
JForsberg

date: May 1, 2001

to: Allen Davey, Team Manager
Des Moines, Iowa

from: Associate Area Counsel (LMSB)
St. Paul, Minnesota,

subject: [REDACTED]
Statute of Limitations on Carryforwards of TEFRA Partnership Items

Our advice has been requested as to (1) whether the statute of limitations bars the assessment of any deficiency for [REDACTED]'s TYE [REDACTED] attributable to adjustments to partnership items of certain partnerships, and (2) whether the statute of limitations bars the assessment of any deficiencies attributable to NOL and credit carryforwards from the partnerships' pre-1996 taxable years. We conclude that (1) statute of limitations bars the assessment of any deficiency for [REDACTED]'s TYE [REDACTED] attributable to adjustments to partnership items of the partnerships, and (2) the statute of limitations bars the assessment of deficiencies attributable to carryforwards from the partnerships' pre-[REDACTED] taxable years.

FACTS

[REDACTED], formerly known as [REDACTED] (hereafter "[REDACTED]") is a Delaware corporation which filed consolidated returns as the common parent of a consolidated group. [REDACTED] has a taxable year ending December 31.

[REDACTED]'s TYE's [REDACTED], [REDACTED], [REDACTED], and [REDACTED] are currently under examination. [REDACTED]'s Forms 1120 for those years were filed on [REDACTED], [REDACTED], and [REDACTED], respectively. The statute of limitations on assessment for [REDACTED]'s TYE [REDACTED] was extended to [REDACTED], by a Form 872 executed on behalf of the taxpayer on [REDACTED], and the Service on [REDACTED]. The Form 872 made no reference to the period of limitations for assessing tax attributable to partnership items. By a Form 872 executed on behalf of the taxpayer on [REDACTED], and the Service on [REDACTED], the statute of limitations for

██████████'s TYEs ██████████, ██████████, and ██████████ was extended to ██████████. Unlike the first Form 872, this Form 872 explicitly provided, inter alia, that it applied to any tax "attributable to any partnership items, affected items, computational adjustments, and partnership items converted to non-partnership items."

██████████ was a corporation which was a partner in several TEFRA partnerships engaged in the operation and ownership of ██████████ plants. These partnerships have taxable years ending December 31 and generally file their partnership returns by July of the following year. On or about ██████████, ██████████ was acquired by ██████████. The statute of limitations on assessment for ██████████'s TYEs ██████████, ██████████, and ██████████ have been extended to ██████████, by a series of Forms 872 which make no reference to the period of limitations for assessing tax attributable to partnership items. In ██████████, prior to the expiration of the three-year statute of limitation of I.R.C. § 6229(a), Forms 872-P were secured from the partnerships extending the statute of limitations for the partnerships' TYEs ██████████ and ██████████ to ██████████. No consents have ever been secured with respect to any of the partnerships' pre-██████████ taxable years and the ██████████-year statute of I.R.C. § 6229(a) has expired for all of the partnerships' pre-██████████ taxable years.

The ██████████'s returns for the TYEs ██████████ through ██████████ include NOL and credit carryforwards that are attributable to partnership items from the partnership's pre-██████████ taxable years.

DISCUSSION

Issue 1

I.R.C. § 6229(a) provides that "except as otherwise provided in this section," the period for assessing any tax imposed with respect to any partnership item for a partnership taxable year shall not expire before the later of three years from the filing of the partnership return for the year or the last day for filing the return for the year. Section 6229(b)(3) provides that "Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items."

The period of limitations set forth in section 6229(a) for assessing the tax attributable to partnership items is an alternative, minimum period of limitations. Rhone-Poulenc v. Commissioner, 114 T.C. 533 (2000). The period for assessing tax attributable to partnerships item generally does not expire until the later of the expiration of the partnership's statute of

limitation or the individual partner's statute of limitations. Due however to the provisions of section 6229(b)(3), a Form 872 which does not by its own terms expressly apply to partnership items will not extend the statute of limitation with respect to partnership items.

In the present case, the statute of limitations for assessing any tax for [REDACTED]'s TYE [REDACTED] attributable to items of the partnerships has expired as the partnership statute is closed and [REDACTED]'s statute for that year is open only by virtue of a Form 872 which does not expressly extend the statute for partnership items. Conversely, the statutes of limitations for assessing any tax for [REDACTED]'s TYEs [REDACTED] and [REDACTED] attributable to items of the partnerships remain open by virtue of both the Forms 872-P secured from the partnerships and the Form 872 secured from [REDACTED] (which is expressly applicable to partnership items).

Issue 2

As a general rule, the statute of limitation does not preclude the assessment of deficiencies arising from the disallowance of NOLs and credits carried forward from barred years. See, Hill v. Commissioner, 95 T.C. 437 (1990); State Farming Co., Inc. v. Commissioner, 40 T.C. 774 (1963); Diesel Performance, Inc. v. Commissioner, T.C. Memo. 1999-302; Rev. Rul. 69-543, 1969-2 C.B. 1. The TEFRA partnership procedures, however, provide generally that the tax treatment of partnership items can only be determined in partnership level proceedings. The Service is bound by the partnership's reporting of partnership items for a year if it has not conducted a TEFRA proceeding for that year. Doe v. Commissioner, 97-1 U.S.T.C. ¶50,460 (10th Cir. 1997). While carryforwards attributable to partnership items are not partnership items, they are computational affected items. Bob Hambric Chevrolet v. United States, 849 F. Supp 500 (W.D. Tex. 1994); Temp. Reg. 301.6231(a)(6)-1T(a)(1). Adjustments to affected items can only be made based on adjustments to partnership items determined at the partnership level and, accordingly, carryforwards of partnership items cannot be adjusted without first conducting a TEFRA proceeding for the year giving rise to the partnership item carried forward.


In the present case, the three-year statute of limitations of I.R.C. § 6229(a) has expired as to all of the partnerships' pre-[REDACTED] taxable years. The statute of limitations on assessment for [REDACTED]'s TYEs [REDACTED], [REDACTED], and [REDACTED], and [REDACTED]'s TYE [REDACTED] have been extended by Forms 872. However, as the Forms 872 for these years do not expressly reference the statute of limitations

for partnership items, they do not extend the statute as to partnership items. Accordingly, partnership items for the partnership's pre-[REDACTED] taxable years (and therefore the computational items such as carryforwards) cannot now be adjusted.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions respecting this matter, please call Jack Forsberg at (651) 290-3473, ext. 227.

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By: 
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cc: David Pollard, Team Coordinator
Associate Chief Counsel (Procedure and Administration)